

United States District Court  
for the  
District of South Carolina  
Spartanburg Division

Robert Moss, individually and as )  
general guardian of his minor child, )  
et al., )

Plaintiffs )

Vs. )

Civil Action No. 7:09-CV-1586-HMH

Spartanburg School District No. 7, )

Defendant )

**PLAINTIFFS' MOTION FOR LEAVE TO FILE AND SERVE  
SURREPLY MEMORANDUM TO DEFENDANT'S "REPLY  
MEMORANDUM IN SUPPORT OF MOTION TO DISMISS  
EQUAL PROTECTION CLAIM"**

Now come plaintiffs and, pursuant to Local Civil Rule 7.05 DSC,  
respectfully say:

This action was commenced by a Complaint that pleaded a single claim,  
pursuant to the Establishment Clause of the Constitution. The First and Second  
Amended Complaints added an Equal Protection claim. Defendant moved to  
dismiss each of these claims. Each motion to dismiss was the subject of separate

briefing. First the Establishment Clause claim was fully briefed.<sup>1</sup> Then the Equal Protection claim was fully briefed.<sup>2</sup>

In its final brief on the Equal Protection Clause claim defendant returned to the Establishment Clause claim and made three arguments directed to that claim. *See*, Arguments I.A, I.B., and I.C., dkt. no. 35, at pp. 1-3.

Local Rule 7.05 DSC provides that arguments in memoranda shall “relat[e] to the matter before the Court for ruling.” Rule 7.05(A)(3). The matter before the Court for ruling in defendant’s most recent memorandum was the motion to dismiss the Equal Protection claim and not the motion to dismiss the Establishment Clause claim. Defendant’s memorandum was entitled “Reply Memorandum in Support of Motion to Dismiss Equal Protection Claim.”

Under the circumstances it is appropriate for the Court to allow plaintiff a Surreply Brief addressed to the arguments raised by defendant. *Pimentel & Sons Guitar Makers, Inc. v. Pimentel*, 229 F.R.D. 201 (D.N.M. 2005).

A proposed Surreply Brief is attached.

---

<sup>1</sup> Memorandum in Support of Motion to Dismiss, dkt. 19-1, filed 8/31/09; Plaintiff’s Memorandum in Opposition to Defendant’s Motion to Dismiss, dkt. 30, filed 10/10/09; Reply Memorandum in Support of Motion to Dismiss, dkt. 32, filed 10/22/09.

<sup>2</sup> Memorandum in Support of Motion to Dismiss Equal Protection Claim, dkt. 33-1, filed 10/30/09; Plaintiff’s Memorandum in Opposition to Defendant’s Motion to Dismiss, dkt. 34, filed 11/16/09; Reply Memorandum in Support of Motion to Dismiss Equal Protection Claim, dkt. 35, filed 11/20/09.

Defendant opposes the granting of this motion.

ACCORDINGLY, plaintiffs move for leave to file and serve the attached proposed Surreply Memorandum.

Respectfully submitted, November 28, 2009.

s/ Aaron J. Kozloski  
D.S.C. Bar No. 9510  
Capitol Counsel  
P.O. Box 11902  
Capitol Station  
Columbia, S.C. 29211  
Tel: 803-748-1320  
Fax: 8-3-255-7074  
[Aaron@capitolcounsel.us](mailto:Aaron@capitolcounsel.us)

George Daly  
(*pro hac vice*)  
139 Altondale Avenue  
Charlotte N.C. 28207  
Tel: 704-333-5196  
[Gdaly1@bellsouth.net](mailto:Gdaly1@bellsouth.net)  
N.C. Bar No. 1071

Attorneys for Plaintiffs